

Exhibit D

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 BILL WISSER,

5 Plaintiff,

6 - against -

7 VOX MEDIA, INC.,

8 Defendant.

9 -----X

10 1251 Avenue of the Americas
11 New York, New York

12 August 15, 2019
10:00 a.m.

13
14 (Confidential portions included)

15
16 Deposition of Plaintiff, WILLIAM WISSER,
17 before Rita Persichetty, a Notary Public of the
18 State of New York.

A F T E R N O O N S E S S I O N

(Time noted: 12:30 p.m.))

W I L L I A M W I S S E R, resumed

and testified as follows:

CONTINUED EXAMINATION

BY MS. STROM:

(Defendant's Exhibit 16, Plaintiff

Byron Smith's Answers and Objections to

Defendant's First Set of Interrogatories,

marked for identification.)

BY MS. STROM:

Q So what we've just marked as Exhibit

16 are plaintiff Byron Smith's answers and

objections to first interrogatories. But then

if you go lower it says, "Pursuant to Rule 33

of Federal Rules of Civil Procedure, plaintiff

Bill Wisser, plaintiff."

A I don't understand what -- who is

Byron Smith?

Q I have a feeling it's one of your

lawyers other clients.

MR. FREEMAN: Yeah, probably it's

just a typographical error.

Q So at the top of this there's a

caption that says Bill Wisser versus Vox Media?

1 A Yes.

2 Q Have you ever seen this document
3 before?

4 A No.

5 Q If you go to the last page it says,
6 "Plaintiff's verifications of his answers and
7 objections to defendants first set of
8 interrogatories," is that your signature on
9 this page?

10 A No, I don't think so.

11 Q Okay. So --

12 A I mean, I don't know what this
13 document is. I don't understand who Brian
14 Smith is and I'm not conversing with this
15 document. I'm a little confused why -- what is
16 this?

17 Q So these are the interrogatory
18 responses that your lawyer served in this
19 action on your behalf. And the last page
20 purports to be your verification, which is
21 under oath. Which is the same as today.
22 Testimony under oath is your last page signing,
23 that has the same legal effect as testimony
24 here.

25 And it is says, "Pursuant to Rule 33

1 of Federal Rules of Civil Procedure, plaintiff
2 Bill Wisser being duly sworn deposes and says
3 that I am the plaintiff in this action, that
4 I've read plaintiff's answers and objections to
5 defendant's first set of interrogatories dated
6 June 7, 2019 and know the contents thereof and
7 the same are true and accurate to the best of
8 my knowledge, information and belief."

9 Have you seen this document before?

10 A I have not seen this document before.
11 I don't think so.

12 Q Okay. That's interesting.

13 A And I'm a little confused still when
14 you say these are supposedly my reactions to
15 first -- the defendant's first set of
16 interrogatories. What does the first set of
17 interrogatories mean?

18 Q This is something your lawyer should
19 talk to you about and after the deposition you
20 may want to talk to him about it because your
21 lawyer has served these on us with the legal
22 implication that you were the person signing
23 them and that this is all your testimony.

24 So what we're about to go through in
25 this case was served on us as if this is your

1 testimony in this case. So we served
2 interrogatories and you responded to them.

3 A Well, this all seems to be like a
4 technical exchange between your side and our
5 side and I haven't had time to really look at
6 this.

7 Q I assure you James is E-mailing right
8 now to go what the heck is going on, oh no.

9 MR. FREEMAN: I'm not E-mailing.

10 Q Okay. Well, you should talk to your
11 lawyer about this because this has some pretty
12 big implications if you did not actually sign
13 this.

14 So if you go to what at the bottom is
15 number Page 3 -- well, actually, sorry, the
16 last page was signed on June 7, 2019. Or the
17 last page is dated June 7, 2019, correct?

18 A Are you asking me a question?

19 Q Yes.

20 A What's the question?

21 Q Is that last page dated June 7, 2019?

22 A Yes, it appears to be.

23 Q Okay. Well actually, sorry, these
24 were served by you, James.

25 A You know, is this just a routine

1 legal move and they are submitting this and
2 saying what the scope of the lawsuit is, is
3 that what this is?

4 Q No, I can assure you that this is --
5 well, you can -- I'm not going to give you
6 legal advice. You can talk to your lawyer
7 about what this means.

8 A Okay. Well, I'm loathe to make much
9 comments on this -- many comments on this till
10 I've had a chance to review this more
11 thoroughly.

12 Q Please go ahead. Review it.

13 A Well, I would like to review it more
14 at my leisure.

15 Q That's not how this works. No, you
16 are under oath, this is a deposition and you
17 get to review it right now.

18 A Okay. This may take a while.

19 Q That's fine.

20 A We've already established, have we
21 not, that Byron Smith is -- that that is a
22 typo...

23 Q It appears your attorney --

24 A It should be by plaintiff Bill
25 Wisser.

1 Q It appears your attorney made a typo,
2 yes.

3 A Or is this something that applies to
4 Byron Smith's case and not mine?

5 Q You can keep reading. I can't answer
6 that.

7 A Well, I looked it over, what was the
8 question you were asking me?

9 Q So if you go to Interrogatory No. 1,
10 which is on Page 3 it says, "Identify all
11 persons or entities you believe have infringed
12 upon your intellectual property rights in this
13 photograph." And the answer is, "Defendant."

14 Is that answer correct?

15 A Well, you showed me today what
16 appears to be an infringement by the restaurant
17 Ariete. At the time that this was submitted,
18 we -- I didn't know about it, we didn't know
19 about it, so -- and also, what is the answer
20 here? Defendant?

21 Q Defendant means that you believe Vox
22 Media was the only -- or is the only person you
23 identified in response to this question.

24 A Well, as I just said, you've shown us
25 today what appears to be an infringement by the

1 restaurant, so we didn't know about that at
2 that time. There may be others, I don't know.
3 I'm pretty sure but there were others.

4 Q Were there others that you know of at
5 the time that you, that these answers and
6 objections were signed on, or dated June 7,
7 2019?

8 A June 7th, I don't know subsequent to
9 my filing -- subsequent to me doing that, I
10 have done searches online and I think that
11 there are some other usages that I didn't know
12 about, so there is a potential that there might
13 be other entities that use the pictures.

14 MS. STROM: Can I mark as Exhibit 17
15 this document, please.

16 (Defendant's Exhibit 17, Complain in
17 Bill Wisser v Goop Inc, marked for
18 identification.)

19 Q This is a document, says it's a
20 complaint that I pulled off of PACER. It says
21 Bill Wisser against Goop Inc., G O O P Inc.

22 Do you know what this document is?

23 A Yes.

24 Q What is this document?

25 A It appears to be a suit against Goop

1 for using a picture of mine.

2 Q Do you know if it's the same picture
3 that is at issue in this lawsuit?

4 A Yes, ma'am.

5 Q And do you see at the top where it
6 says, "Document one filed 04/25/19"?

7 A Yeah, I wasn't aware that it had been
8 filed though. I've listed a number of
9 suspected uses, unauthorized usages and this
10 was one I wasn't sure that we had actually
11 initiated the lawsuit.

12 Q On June 7, 2019, did you believe that
13 Goop Inc. had infringed your copyright in the
14 photograph at issue in this lawsuit?

15 A I don't know about the date of when I
16 detected the usage by Goop. But I've, I've
17 seen some other usages besides Goop. But
18 the -- my understanding was we were just filing
19 a suit against Vox Media and these are other
20 potential suits, I think in the future. I
21 wasn't aware that we had gone ahead with the
22 Goop matter.

23 Q So would you agree with me that
24 4/25/19, April 25, '19 is before June 2019?

25 A You're asking me is April before

1 June?

2 Q Yes.

3 A Okay, yes.

4 Q And you filed this lawsuit alleging
5 that Goop had infringed the same photograph at
6 issue in this lawsuit, correct?

7 A Yeah, I guess so. I was aware, as I
8 said to you just a moment ago, I wasn't aware
9 that this suit had been filed, it's something I
10 pointed out to my lawyers that I saw that the
11 same picture was used by Goop and a couple of
12 other websites, but that -- they were potential
13 suits there but I wasn't aware that this had
14 been filed.

15 Q What did you do to ensure that these
16 interrogatory responses were accurate?

17 A Well, I didn't see these
18 interrogatory responses until today, you just
19 showed them to me. And I asked for time to
20 look it over, even now I feel a little bit
21 rushed because the first section of it before
22 Page 1 and 2, before you get to Page 3 is all
23 legal gobbledegook that for a layman like me is
24 hard to translate. So I didn't have a chance
25 to evaluate this document prior to this

1 discussion now.

2 Q Okay. Thank you.

3 If you look at Interrogatory No. 4,
4 which is on the same page it says, "In order to
5 compute, quote/unquote, actual damages as
6 demanded in your complaint, identify all
7 licensing fees offered to you by any third
8 party whether or not accepted or received by
9 you with respect to the photograph to the
10 extent not already covered by Interrogatories 2
11 and 3." And it says, "none."

12 Is it true that the only licensing
13 fee offered to you by a third party, to the
14 best of your knowledge, was Miami New Times
15 which is identified in response to
16 Interrogatories 2 and 3?

17 A Yeah. Well, I had a contract with
18 Miami New Times and I granted them, you know,
19 rights to use the picture and that's the only
20 entity I granted rights to.

21 Q So if you go to the interrogatory
22 before that, Interrogatory No. 3, it says, "In
23 order to compute actual damages as demanded,
24 identify all persons or entities to whom you've
25 attempted to license the photograph and any

1 fees demanded by you for any such license."

2 And the answer to Interrogatory No. 3
3 says, "Miami New Times"; is that correct?

4 A Yeah, I didn't license the
5 photographs to anybody else.

6 Q But it doesn't say that, it says
7 identify all persons or entities to whom you've
8 attempted to license the photograph.

9 A I didn't attempt -- oh, well, I guess
10 you can say that when I wrote to Jason Odio
11 that was in essence saying, hey, do you want to
12 license these pictures.

13 Q Right. So that would be incorrect
14 that Miami New Times is the only person you
15 attempted to license these photographs to; is
16 that correct?

17 A Yes, that's correct.

18 I think that, you know, these cases
19 evolve stage by stage and, you know, it doesn't
20 all happen at once and sometimes more
21 information comes in.

22 Q But -- okay. In this, had you
23 already attempted to license the photograph at
24 issue here to Jason Odio before these
25 interrogatory responses?

1 A What is the date on the Jason Odio
2 correspondence?

3 Q We can go back. I believe it's
4 Exhibit 8 -- 11.

5 A The correspondence was around
6 April 14.

7 Q Of 2016?

8 A 2016, Hey Jason, good talking to you.
9 Glad you liked the photo, blah, blah. And the
10 second one is April 13th, Hey Jason, thanks for
11 your interest. So that was an attempt to
12 license the photographs on April 13 --

13 Q Of 2016?

14 A -- 2016. Yes.

15 Q And you will agree that 2016 is
16 before 2019?

17 A I do think you're right.

18 Q Thank you.

19 A None of that goes to the real
20 question in the lawsuit, though, which is about
21 the unauthorized usage of my work by your
22 client.

23 Q Right.

24 A But you can find that this answer
25 wasn't as complete as it should have been.

1 Q And was supposedly verified, so we
2 certainly have a basis for sanctions at this
3 point.

4 MS. STROM: Can I have marked as
5 Exhibit 18 the defendant's offer of
6 judgment pursuant to Federal Rule of Civil
7 Procedure 68, please.

8 (Defendant's Exhibit 18, Defendant's
9 offer of judgment pursuant to Federal Rule
10 of Civil Procedure 68, marked for
11 identification.)

12 Q Please take your time while you look
13 that over.

14 A Okay.

15 Q Have you ever seen this document
16 before?

17 A No.

18 Q Do you know what an offer of judgment
19 is?

20 A Yes.

21 Q What is an offer of judgment?

22 A It's to settle the case.

23 Q Okay. And were you aware that Vox
24 Media submitted an offer of judgment in this
25 case?

1 A Yes, I was.

2 Q That was for 30 -- \$3500?

3 A Yes, I'm aware of that.

4 Q And is it -- and you rejected this
5 offer of judgment, right?

6 A Correct.

7 Q Why did you reject this offer of
8 judgment?

9 A Way too low.

10 Q Okay. We're going to now move for
11 sanctions and seeking a bond against you and
12 your attorneys for the following: All
13 attorneys fees in this case for the rejection
14 of the offer of judgment. And as part of that,
15 I need to establish that you're an experienced
16 litigant, so that when we seek our fees. So to
17 that end --

18 A When you say a bond, what do you
19 mean?

20 Q You can talk to your client about
21 that -- your lawyer about what that means?

22 A All right.

23 MS. STROM: Okay. Can I mark as
24 Exhibit 19 a complaint that is captioned,
25 Bill Wisser against The Infatuation Inc.